

Editor's note: Reconsideration denied by order dated Feb. 20, 1974

EDGAR L. CRAVEN

IBLA 73-361

Decided October 29, 1973

Appeal from decision of Alaska State Office, Bureau of Land Management, denying reinstatement of an oil and gas lease AA-4405, terminated for failure to pay timely rental.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases:
Rentals! ! Withdrawals and Reservations: Effect of

An oil and gas lease, terminated for failure to pay timely rental, cannot be reinstated where the federal oil and gas interests in the lands are shown by the records to have been withdrawn. 43 CFR 3108.2-1(c)(3).

APPEARANCES: Edgar L. Craven, pro se.

OPINION BY MR. FISHMAN

Edgar L. Craven has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated March 29, 1973, denying his petition for reinstatement of his oil and gas lease, AA-4405, embracing lands in sec. 22, T. 16 N., R. 3 W., S.M., Alaska.

The State Office, in its decision, noted that though the anniversary date of the lease was January 1, 1973, annual rental was not received until January 22, 1973. The pertinent regulation, 43 CFR 3108.2-1(c)(3), provides for denial of a petition for reinstatement if the oil and gas interests of the Government "* * * have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing * * *." Relying on this provision, and a withdrawal of lands, including those in issue here affected by Public Land Order No. 5184, March 16, 1972, 37 F.R. 5587, the State Office denied appellant's petition for reinstatement. We agree.

Appellant contends that his excuse for failure to make timely payment rests on his inadvertence in addressing a letter containing the rental check. He states that he sent the check for forwarding to Mabel L. McGrath who holds an interest of 16 2/3 per cent in the lease. However, due to appellant's forgetfulness he misaddressed the letter to One Thomas Circle, rather than One Scott Circle.

43 CFR 3108.2-1(c)(3) provides as follows:

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

Public Land Order 5184, dated March 9, 1972, (37 F.R. 5888), provides in applicable portion as follows:

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), and by virtue of the authority vested in the Secretary of the Interior in section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708 (hereinafter referred to as the Act), it is ordered as follows:

1. Subject to valid existing rights, all of those lands withdrawn by section 11 of the Act and which are not also withdrawn for any national forest, Naval Petroleum Reserve Number 4, or any part of the National Wildlife Refuge System and which are outside the area described in paragraph 2 of this order are hereby withdrawn: (a) From all

forms of appropriation under the public land laws; (b) from location and entry under the mining laws, 30 U.S.C. ch. 2; (c) from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181-287 (1970); and (d) until December 18, 1975, from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339; and said lands are hereby reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of said Act.

2. Subject to valid existing rights, the following described lands are hereby withdrawn from all forms of appropriation under the public land laws, including selections by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining law, 30 U.S.C. ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181-287 (1970), and are hereby reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of said Act:

All of those lands withdrawn by section 11 of the Act lying between 58 degrees N. and 64 degrees N. latitude, and west of 161 degrees W. longitude, and not withdrawn for any part of the National Wildlife Refuge System.

The area described aggregates approximately 11 million acres.

3. Prior to the conveyances to the State of Alaska of any lands described in

paragraph 1 of this order, and prior to the conveyances under section 14 of said Act of any lands described in paragraph 1 or paragraph 2 of this order, the lands shall remain subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to make contracts and to grant leases, permits, rights of way, or easements shall not be impaired by this order. Applications for leases under the Mineral Leasing Act, supra, will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

* * * * *

The use plats of the State Office state that the entire township, i.e., T. 16 N., R. 3 W., S.M., Alaska, was withdrawn by PLO 5184, which order, as indicated above, precludes mineral leasing. In the circumstances, 43 CFR 3108.2-1(c)(3) precludes the reinstatement of the lease.

This, of course, is dispositive of the merits of the case. However, we note that appellant's inadvertence in misaddressing a letter to his co-lessee, which contained the rental payment, is not a sufficient basis for relief. See Louis Samuel, 8 IBLA 268, 274 (1972). The failure to pay rental timely is neither, "justifiable or not due to a lack of reasonable diligence on the part of the lessee," within the ambit of 30 U.S.C. § 188(c) (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Martin Ritvo
Member

Edward W. Stuebing
Member

